

MINUTES OF THE CAPITAL PROJECTS AND BOND OVERSIGHT COMMITTEE

December 17, 1996

The Capital Projects and Bond Oversight Committee met on Tuesday, December 17, 1996, at 10:00 a.m., in Room 129 of the Capitol Annex. Representative Robert Damron, Chair, called the meeting to order, and the secretary called the roll.

Present were:

Members: Representative Robert Damron, Chairman; Senators Tom Buford, Bob Leeper, and Denny Nunnelley; Representatives Jim Maggard and Tommy Todd.

Guests: Representative Gippy Graham; Representative Marshall Long; Bill Hintze, Ron Carson, Roger Burge, Earl Clements, Allen Holt, Patricia Pennington, Geoff Pinkerton, Governor's Office for Policy and Management; Secretary John McCarty, Bonnie Howell, Patrick Hughes, Karen Powell, Finance and Administration Cabinet; Secretary Roy Peterson, Education, Arts, and Humanities Cabinet; Secretary Ann Latta, Tourism Development Cabinet; Commissioner Armond Russ, Jim Abbott, Department for Facilities Management; Tom Howard, Kim Blitch, Bart Hardin, Office of Financial Management and Economic Analysis; Sally Hamilton, Doris Holtzclaw, Stu Talbert, Kentucky Educational Television; Dr. James Klotter, Kentucky Historical Society; Bob Bender, Hugh Smith, Department of Parks; David Bratcher, Lori Flanery, Economic Development Cabinet; Debra Wash, Administrative Office of the Courts; President Kern Alexander, Murray State University; Mary Allen, University of Kentucky; Sherron Jackson, Council on Higher Education; David Malone, Peck Shaffer and Williams; Jack Affeldt, Paris Hopkins, Don Judy, LRC.

LRC Staff: Mary Lynn Collins, Pat Ingram, Scott Varland, Esther Robison.

Press: Jeff Burlew, State Journal; Tony McVey, Kentucky Network; Charles Wolfe, Associated Press.

Representative Maggard made a motion to approve as submitted the minutes of the November 22, 1996 meeting. The motion was seconded by Representative

Purchase of Agricultural Conservation Easements (PACE) program and the related request for \$350,000 from the state capital construction and equipment purchase contingency account. Chairman Damron said he and staff attended a meeting of the PACE Board at which the Committee's concerns were discussed. He said the PACE Board plans to provide a written response to the Committee's questions in time for the Committee's January 1997 meeting.

Chairman Damron said the Committee would deviate from its agenda and consider first, under New Business, the monthly project report from the Finance and Administration Cabinet. The first project involved a proposed allocation of \$3,375,000 from the state capital construction and equipment purchase contingency account to fund a cost overrun for the Kentucky History Center project in Frankfort. Chairman Damron welcomed Representative Gippy Graham to the meeting in support of the project. Present to discuss the project were Secretary Roy Peterson, Education, Arts and Humanities Cabinet; Secretary John McCarty, Finance and Administration Cabinet; Bill Hintze, Deputy State Budget Director, Governor's Office for Policy and Management; and, Commissioner Armond Russ, Department for Facilities Management.

Secretary McCarty said in early September bids were opened for construction of the Kentucky History Center and they were substantially above the project's authorized scope. The Finance Cabinet then took the unprecedented action, permitted by statute, of taking new bids from the 3 lowest bidders. Prior to the rebidding and in consultation with the project architect and Dr. Peterson's staff, changes were made in the project's design and scope. First and foremost in their minds, Secretary McCarty said, was not to compromise the integrity of the project. He said today's request represents an allocation of an unprecedented amount from the contingency account. It is being done to move the project forward quickly and expeditiously. He stressed the decision was not made capriciously and was made in conjunction with members of the history community, Dr. Peterson's staff, and Governor Patton's staff. He said this action has been taken in the best interest of the project.

Mr. Hintze said the Finance Cabinet is approving and recommending to the Committee today the allocation of \$3,375,000 from the contingency account for the project, which represents the full 15% scope increase allowed by statute. [The project's scope, authorized in the 1990 Regular Session and 1995 Special Session, totaled \$22,500,000, including \$19,500,000 in state bond funds and \$3,000,000 in private

(Information provided by the Finance Cabinet indicates that changes made in the project after the first round of bids were primarily related to finishes: the substitution of Formica and aluminum for stainless steel; reduction in the varieties of brick; substitution of concrete for brick in some areas; use of less expensive stone, etc. No alteration was made in the size of the building.)

Representative Todd said he was probably the only remaining member who was present several years ago when this Committee visited and saw the conditions under which the state's history was being stored - it was in basements and in conditions unfit to store anything, especially important records. He made a motion to approve the contingency allocation for the project. The motion was seconded by Representative Maggard.

Chairman Damron said he commended the Administration's efforts. He knew the first bids were dramatically over what was expected or authorized, and he knew the staff of the Finance Cabinet, GOPM, the Historical Society, and the Education, Arts, and Humanities Cabinet had worked hard on this project. With an eye to future projects, he asked if there were any particular reason that can be identified why the original project cost estimates were so much lower than the construction bids. Mr. Hintze said 6 years have elapsed since the original project authorization (for \$2,000,000) was made, and that certainly has to be a factor. He said bids were competitive and from reputable contractors.

Commissioner Russ suggested several factors. First, the History Center is a unique structure, and because the facility is unique, there are factors in the estimation that will vary among estimators. Also, there is the time factor since the project was first funded 6 years ago. He said there was a rigorous design phase so that the facility would be unique and would provide all of the necessary features for historical preservation, and that may have contributed to the problem. Finally, he said, as has been previously reported, the state is going through a volatile period right now in the construction market. In some areas and on some projects, the state is seeing bids higher than expected; yet, in other cases, project bids are coming in under what was expected. He said he cannot explain that volatility; he thought it was a matter of a perception contractors have.

Mr. Hintze noted the \$3,000,000 in private funds was raised to ensure the History Center will have adequate exhibits, and will be able to showcase its collections. He

Chairman Damron said time can be a double-edged sword. While bid costs have climbed on a number of projects, the state's interest cost on its bonded debt has actually gone down. So, interest cost savings may tend to offset some higher than expected construction bids. He said he hoped to work with Mr. Hintze to develop, prior to the 1998 Regular Session, a process that can be put in statute or regulation to improve capital project cost estimates. He said when the General Assembly funds projects in the budget, in his opinion, an accompanying amount needs to be provided in the contingency account. He said the contingency monies allocated in the current fiscal year already exceed the amount the Committee has ever approved in any one fiscal year since the Committee's creation. Pointing to all of the Parks Revitalization projects and corrections projects in process, he said he and Secretary McCarty need to discuss with the Governor the need to use budget surplus dollars to replenish the contingency account before surplus funds are expended for other purposes.

Representative Todd asked if the new prevailing wage law affected the bid cost of the History Center project. Mr. Hintze said the project was, from the beginning, under prevailing wage requirements, and the project was not in any way affected by the legislative changes in prevailing wage enacted in 1996. Chairman Damron said his understanding is that the impact of the new prevailing wage law will primarily be on local government and school district projects, because state projects over \$400,000 were already under prevailing wage. Mr. Hintze said that is correct.

The motion to approve the contingency allocation for the History Center project was approved by unanimous voice vote.

Mr. Hintze next reported for Kentucky Educational Television (KET) an unbudgeted federally-funded major item of equipment, a scope increase that allows the state to take advantage of a federal grant of \$474,200 from the National Telecommunications and Information Administration (NTIA). The federal funds are to be used for acquisition of a new transmitter and transmission line for Channel 68. To secure funding from the federal government, the state has to provide a like match. The 1996 General Assembly authorized \$387,000 in General Funds for Channel 68 Antenna Replacement, which can be used for the required state match. To make up the balance of the 50% matching share, KET Agency Funds of \$87,200 are to be pledged toward the match. Acquisition of the 3 items for Channel 68 - transmitter, transmission line, and antenna replacement - will now be considered a single project with a total

legal agreements to transfer Channel 15's license to KET. She said no agreements have been, because they involve lien clearances and FCC attorneys have been working on them. The plan is for KET initially to operate Channel 15 under a management agreement. This would involve no state funds, and KET basically would be acting as a chief executive officer. She said Ed Shadburne, a former manager of WHAS and now retired, will operate Channel 15.

Ms. Hamilton said while the management agreement is in effect, the agencies will work on transfer of Channel 15's license to KET. The transfer, which is an FCC process with a public hearing, should be completed by May 1997. When the license is officially transferred (at an estimated cost of \$399,000), the management agreement will cease. At that time, KET will enter into 2 lease agreements for a total of \$10,000 per month. One lease agreement will be for the tower site, where the Channel 15 tower, antenna, and transmitter are located, as well as Channel 68's antenna and transmitter. The second lease agreement will be for Channel 15's broadcast equipment. The lease arrangement will continue until the proposed merger is presented to the 1998 General Assembly. In 1998, KET will request authorization to purchase Channel 15's equipment and about 6 acres of land that is the tower site, for a total of \$1.1 million.

Chairman Damron asked if the earlier reported, federally-assisted equipment acquisition for Channel 68 is a wise investment, in light of the proposal to take over Channel 15, and he asked if Channel 15 will replace Channel 68. Ms. Hamilton said this question has been debated hotly at KET. She said the programming now on KET's Channel 68 will move to Channel 15 after the license transfer. Channel 68 will then be a "ready-to-learn, ready-to-earn" type station, with GED, educational, and how-to programming. She said the real issue is that both spectrum are very valuable. They are non-commercial and cannot be sold to any commercial entity, but with advance-TV becoming available in the next couple of years, channel spectrum is something that KET feels it definitely needs to hold onto. She assured the Committee the expenditure of funds on Channel 68 is for a channel KET will use. She said Channel 68 will be a very active educational channel that hopefully can be replicated in other parts of the state.

Chairman Damron said the proposed use of Channel 68 represents a policy change to something not done in the state right now, and since KET is adding a station, he asked how operating costs will be affected. Ms. Hamilton said Mr. Hintze has required KET to look closely at operating costs, and KET estimates that when the

equipment and infrastructure to run a station, and fundraising is done to finance production efforts.

In response to questions from Representative Maggard, Ms. Hamilton said the lease agreements for Channel 15's equipment, tower, transmitter and land will be in effect from May 1997 to July 1, 1998 at \$10,000 per month (for a total cost of about \$140,000). She said \$1.1 million will be requested from the 1998 General Assembly to purchase the equipment and land; the equipment has been appraised by Joseph Finn and Company from Massachusetts.

Representative Maggard asked if KET could enter into a lease-purchase agreement so the monthly lease payments could count toward the purchase. Ms. Hamilton said KET, upon the advice of Finance's General Counsel and GOPM, has been very careful not to enter into a lease-purchase since the General Assembly has not yet authorized the acquisition.

Representative Maggard asked if Channel 15's tower has any space on it to rent to other entities. Ms. Hamilton said KET's Channel 68 is on Channel 15's tower, and space is also leased to Channel 24. Representative Maggard asked, during the course of the KET/Channel 15 lease agreement, who will be receiving the royalties or rental payments for tower space from the other entities. Ms. Hamilton said the agreement being worked up for the tower lease says royalties will go to KET. Representative Maggard said it was important that the Committee realize that there will be income generated that can help offset the monthly lease and operating costs.

Chairman Damron said about a year ago he heard from KET staff about expected cutbacks in federal and PBS funding, and how KET was going to have to tighten down and be very cautious about expenditures. Now, he said, we are talking about expanding and purchasing another station. He said this does not seem to mesh with the concerns about funding shortages, and asked if federal funding has not gone down as expected or if private donations have increased to offset the funding cuts. Ms. Hamilton said the federal cuts were much less than anticipated; they were expected to be 20% but turned out to be about 5%. She said, over the last 2 years, KET has been very careful; it implemented cost-saving measures and saved a great deal of money. She said KET also has been very lucky in that there have been no major catastrophes - no towers have gone down. She said KET feels very strongly that Channel 15 is a much better position on the dial and a much better channel than KET has right now in Louisville. In

state does acquire Channel 15, KET will switch Channel 68 to Channel 15 and may no longer need Channel 68. He said by approving the \$948,400 expenditure, the Committee in effect may commit the General Assembly to 2 stations in the Louisville viewing area and an additional annual operating cost of \$400,000. Ms. Hamilton said the state definitely would be boxing itself in if it were to give up Channel 68. Mr. Hintze noted that all of the legal agreements are contingent on General Assembly approval. He said GOPM and KET have been very careful in their approach so that the General Assembly will have the final call in the 1998 Session and its options will not be foreclosed.

Chairman Damron asked if the equipment to be purchased with the \$948,400 can be used with Channel 15 if the General Assembly decides not to fund additional operating funds for Channel 68. Ms. Hamilton said KET will be installing a transmitter, transmission line and antenna at Channel 68; if the decision is made to not maintain Channel 68, that transmitter and transmission line could be moved. She said there are 15 KET transmitters statewide; KET has been slowly replacing them, so the transmitter and transmission line can be moved to the location next in line for replacement. She said that is not true of the antenna because antennas are built to specifications for a particular channel and cannot be moved, and the antenna portion of the project cost is \$151,000. Chairman Damron said, therefore, if the Committee approves this project and if the General Assembly decides not to fund 2 stations, the lost expenditure would be \$151,000 plus the cost of moving the transmitter and transmission line. Ms. Hamilton said that is correct.

Secretary Peterson pointed out KET believes the merger will produce a tremendous input of new private resources, since there would no longer be 2 public television systems in the area competing for donations.

Senator Buford made a motion to approve the combined, 50% federally-funded project. The motion was seconded by Representative Maggard and approved by unanimous voice vote.

Next under consideration were cost overruns for the Regional Special Events Center project at Murray State University (MuSU). Joining Mr. Hintze for this discussion were Secretary John McCarty, MuSU President Kern Alexander, Mr. Patrick Hughes from the Finance Cabinet's General Counsel's Office, and Commissioner Armond Russ. Secretary McCarty said the Regional Special Events Center, like the Kentucky History

to install special flooring and expand the facility's seating, for a new total project scope of \$20,650,000.

Mr. Hintze said the project underwent 2 rounds of bids; the first round of bids came in way over the authorized scope, and the project had to be adjusted and rebid. The second round of bids came in at a project scope that could not accommodate the additional flooring and seating approved by the Committee. The decision was made to award the contract, with the hope that sufficient funds would remain to later reinstate the flooring and seating portion of the project. Then, Mr. Hintze said, in February 1996, both design and construction errors were discovered at the facility site, creating serious structural problems. In the interest of keeping the project going, the Finance Cabinet brought in a consultant team, negotiated with the architect and the contractor, and reached agreement on corrective action.

Mr. Hintze said as the state got further into the project, it became clear that there were massive problems requiring extraordinary decisions and actions. At the same time, the goal was to keep the job going, to ensure quality work with all safety concerns met, and to ensure the state's ability to recover any money that might be owed as a consequence of construction or design errors. After a tremendous amount of work and negotiation, Secretary McCarty and his staff, working with MuSU and the consultant team, kept the project moving forward. President Alexander raised his continuing concern that the project needed to be completely serviceable, completely usable with prime components to ensure that usefulness such as the flooring and seating previously requested and identified. Those features had been squeezed out when bids were awarded after a second round, and they were further squeezed by the change orders that had to be executed on an emergency basis to deal with safety issues and to keep the project on track.

Mr. Hintze said that brought him to today's report, which involved several funding streams, commitments, and conditions. In order to address the construction errors and safety concerns, Secretary McCarty authorized an allocation of \$1,787,414 from the emergency repair, maintenance and replacement account. Mr. Hintze said this allocation does not provide any additional features, and does not expand the scope of the project; it patches, repairs, and ensures the integrity of that which was originally envisioned. Mr. Hintze said the state normally would not add emergency funds to a project of this character - that is, a university project or an economic development bond project - but the circumstances surrounding this project are unusual.

netting system. He said a partnership financial arrangement has been agreed to and recommended today to fund those additions.

Senator Leeper asked what Mr. Hintze meant by "putting back in" the flooring and seating. He asked if they were taken out to fully fund the shell, and now were being put back in to furnish the shell. Mr. Hintze said that is basically what he meant. He said they are now, as they were then, considered to be an integral part of the project. About \$750,000, slightly more than the \$650,000 originally recommended to deal with the flooring and seating, is now recommended from the capital construction contingency account to address those needs. Mr. Hintze said the remaining \$400,000 of the additional funds are pledged by MuSU; this is in addition to the \$2,000,000 originally raised by MuSU and the \$650,000 subsequently raised. This \$400,000 will come from a specially assessed student fee or charge for this express purpose.

In response to questions from Chairman Damron, Mr. Hintze said the \$650,000 committed earlier by MuSU is part of the project scope that was awarded in the bids of July 1995. He said the purpose for those funds - to take care of the flooring and seating - was not ultimately included in the construction contract awarded in July 1995; it got squeezed out in the efforts to adjust the project to what was affordable under the second round of bids. The \$650,000 raised to provide the flooring and seating was needed just to construct the building and was no longer available to fulfill the purpose for which it was raised.

Senator Leeper asked what was meant by "fundraising" with regard to the 3 amounts said to be raised by MuSU - whether funds were shifted around in MuSU's budget or whether the community donated the funds. Mr. Hintze said the initially authorized \$2,000,000 was from private fundraising, solicitations from outside the University, certified to the Finance Secretary, and reported to this Committee. The \$650,000 was also presented to the Finance Cabinet and the Committee as private fundraising. However, at present, the \$650,000 that has been remitted to the state account is not from private fundraising; it comes from other University resources, principally investment interest income. Mr. Hintze said it is still the hope and expectation of the University that it will be able to offset that from private fundraising. The new pledge of \$400,000 in Agency Funds reported today for the first time will come from a student fee.

Senator Leeper asked if students are currently paying that fee, or if it is an

current enrollment is at MuSU. President Alexander said there are 8,636 students. Senator Leeper said the fee, then, would be about \$9-\$10 per student per year.

Mr. Hintze said the legal ramifications of the structural problems at the Center are not over; they are being held in abeyance as the state proceeds with construction. He said he does not want anyone to think that there might not be some future legal action to recoup the money the state has put into the project to correct the problems. He also noted there may be other claims presented to the state by those on site. He said the Finance Cabinet is working through its staff lawyers and its legal consultants to do all it can to preserve the state's interests and the taxpayers' interests, and to ensure the state does not put more funds into the situation than it absolutely must.

Mr. Hintze said, to the extent that the funds pledged from the contingency account are not ultimately needed, those funds will be repaid to the account on a dollar-for-dollar basis when the facility is finished. This Committee historically has supported and urged this practice when possible, to preserve the balance in the contingency account. Mr. Hintze closed by saying this is a very complicated situation with circumstances that have troubled everyone.

The project's new total revised scope, exclusive of emergency funding, will be \$21,800,000. Including the emergency allocation, the revised total scope is \$23,587,414.

Chairman Damron asked if MuSU's student body government has been consulted or asked for its approval of the student fees of \$400,000. President Alexander said, before MuSU requested the earlier increase in scope of \$650,000, the University went to the leadership of the student government and they approved at that time a fee that would raise \$420,000 specifically for the resilient flooring. However, the University has not yet actually imposed that fee through a Board of Regents action. Chairman Damron said if any students complain about the fee, legislators can respond that the student leadership approved it.

Senator Buford asked whether the beams and concrete piers constructed by the contractors meet the specifications in the architect's plans. Finance Secretary McCarty said he would refer the question to Mr. Patrick Hughes of the Cabinet's General Counsel's Office, who has been intimately involved in this matter. Mr. Hughes said there are issues such as the one raised by Senator Buford that will ultimately affect the

refabricate the existing beams - basically, making bigger, stronger beams out of the ones already there.

Senator Buford said it seemed to him no one is saying the contractor put in beams that were not in the specifications. Mr. Hughes said no one is making that claim at this time. Senator Buford asked if there was a lack in the strength of the concrete or if the piers were not designed properly by the architect. Mr. Hughes said the Finance Cabinet is currently evaluating that with the assistance of outside structural engineering consultants, and has not yet made that determination. Senator Buford said the supplier of the concrete may have some liability; it sometimes happens that the mix is not strong enough, and he assumed the pilings were tested. Mr. Hughes said there is no indication at this time that the supplier of the concrete supplied less than adequate concrete. He said all concrete being poured has been tested in accordance with standard industry norms.

Senator Buford said the Finance Cabinet's report states that the contractor is willing to allow \$650,000 to be withheld on project completion until the scope of situation is analyzed and the fault weighed out in the courts. He noted, however, that amount is included in the additional funding requested, and he suggested that if the requested amount is reduced by the \$650,000, funding would still be sufficient to complete the project. Mr. Hughes said the \$650,000 would come out of the contractor's retainage account; the contractor has agreed to allow the Finance Cabinet to withhold that retainage beyond completion of the project, and that withholding does not represent an admission of liability on the part of the contractor. He said that is set aside so, in the event the contractor is found to be liable for some portion of the remedial work, the funds can be used by the state to recover some of its cost, and the funds will be used to reimburse the emergency account.

Senator Buford asked whether the state has to give that money to the contractor if liability is found to rest with the architect. Mr. Hughes said that is correct, but that money is already in place in the retainage account; it will not be coming out of the additional funds requested today. Technically, he said, the agreement with the contractor provides that during the first half of the project when the contractor submits a pay application, the Finance Cabinet will pay it and withhold from the pay application 10%. That 10% is then placed into a bank account at a financial institution of the contractor's choice and held there until the contract is completed. So, that money has already been spent in essence; the state has already paid the contractor that amount,

liability in this situation, and the Cabinet is taking all actions possible to protect the interests of the Commonwealth.

Senator Buford asked if the Cabinet feels comfortable it will recover if fault is proved of either party. Mr. Hughes said the Cabinet will pursue all legal remedies; as with any litigation, he said, there is a possibility the state will recover nothing.

Senator Leeper asked if the Committee's action on this vote could in any way compromise the Commonwealth's position in dealing with the architect or the contractor. Secretary McCarty said he thought the action he had taken in recommending these changes is sending a message to all involved that, first, the state is going to build a quality project that the region and the state can be proud of, and second, that the Commonwealth is going to do whatever it takes to preserve all of its legal rights relative to the project. He said the worst thing that could happen is for the project to stop, and the state has taken extraordinary action to ensure that the project continues to move. If the project stops, the cost to ultimately complete the project will be much greater. Mr. Hughes said he did not believe that the Committee's vote would have any adverse effect on the Commonwealth's position.

Chairman Damron asked why MuSU did not come to the 1996 General Assembly and request additional funding for the project. Mr. Hintze said the Finance Cabinet became aware of the errors, structural and design, in February 1996, but at that time did not have the facts in hand to make a full-blown request. The calendar simply did not work in favor of submitting a funding request to the 1996 General Assembly.

Senator Buford said it seems that we do not have much of a choice here, but, since the contractor is still on the job and work is proceeding, he must feel confident about the work he has completed or he would not still be there.

Chairman Damron suggested that any approval motion the Committee adopts should include language that the Committee strongly encourages the state to continue to aggressively pursue all legal recourse available. Senator Buford made such motion, and to approve the cost overrun and the contingency allocation. The motion was seconded by Senator Leeper.

Senator Leeper said he would like to speak to the motion. He said this was the fifth or sixth vote he has made on this particular project, and it is ironic that he will have

all of West Kentucky and Kentucky as a whole, that this project is one of those pieces in the puzzle.

Senator Leeper said there are enough problems with this project that the Committee could easily vote to disapprove it, and back up its position, but he did not think anyone - not the Commonwealth or the Purchase or people who have personal feelings in regards to projects one place or another - would be served by that, and he thought that would be extremely unfortunate. He said this project fits in an extremely nice puzzle of what is going on in the Purchase, and if everyone trying to put that puzzle together will work together, there is no telling what will happen for that area of the state. He said he hoped that, by this Committee going ahead and approving this project, everyone can see what can be accomplished when we work together, rather than tit-for-tat, working apart, and trying to hurt other people.

Senator Leeper said he visited the project site, and the Center is going to be gorgeous. In the final analysis, this project is going to be a beautiful asset to the Purchase area and the region as a whole. He said he was very proud to vote aye on this project and see that it moves forward, and he looked forward to working with the Finance Secretary and seeing that the project comes to fruition.

The motion was approved by unanimous voice vote.

Chairman Damron said the Finance Cabinet also submitted its response to the Committee's vote at its November 26 meeting to take no action on contingency account allocations for cost overruns on 2 Parks Revitalization projects - the Buckhorn Lake State Resort Park Wastewater Treatment Plant Replacement project and the Cumberland Falls State Resort Park Community Pool Renovation project - because the Finance Cabinet had already made the allocations from the contingency account prior to Committee review. He said he and Secretary McCarty had discussed this in detail and he thought the problem will be resolved, and he thanked Secretary McCarty for his cooperation in working with the Committee.

Chairman Damron said the Tourism Development Cabinet had submitted a long-term maintenance plan for the state's covered bridges no longer open to vehicular traffic, as requested by the Committee at its September meeting. The Committee made the development of a maintenance plan by the Parks Department a condition of its approval of a \$200,000 contingency account allocation to match federal funds in a

The Parks Department plan of action is to: (1) obtain MOUs with local covered bridge authorities to perform routine maintenance (mowing, sign maintenance, and trash removal); (2) arrange for such maintenance, using Parks employees or contracting, if efforts to get local agreements are not successful; (3) monitor routine maintenance efforts via Park's Division of Recreational Parks and Historic Sites; (4) conduct semi-annual inspections (by the Division of Construction and Maintenance) to determine the structural condition of the bridges; and (5) request funds for capital improvements from future General Assemblies as needed.

Secretary Ann Latta of the Tourism Development Cabinet said, in addition to the submitted report, she also sent a letter to Transportation Secretary James Codell, requesting that Transportation perform periodic inspections of the bridges closed to vehicular traffic even though the Transportation Cabinet has no statutory responsibility for such bridges. She said Transportation has structural engineers who are qualified to look at the bridges and make sure there is no underlying damage or problems that Parks maintenance staff might not discover. She said she had not yet received a written response from Secretary Codell, but he assured her verbally that Transportation will perform the inspections as it feels they are needed. Chairman Damron thanked Secretary Latta for putting the maintenance plan together, noting that the plan will help when the Cabinet requests and hopefully the 1998 General Assembly will authorize funding to maintain covered bridges if local communities will not or are unable to accept that responsibility.

Representative Maggard said the structural engineers are in Transportation's district offices and can make inspections of the covered bridges part of their routine, and there should be no additional cost associated with the bridge inspections.

Under New Business, the Finance and Administration Cabinet reported the amortization of the cost of leasehold improvements over the remaining term of an existing state lease. Mr. Jim Abbott, Director, Division of Real Properties, said the Department of Education requested that its leased space at 1024 Capitol Center Drive (lease contract PR-3761) be modified to provide an office for a recently hired full-time consultant. The lessor, Rodney Ratliff and Capital Complex East, submitted 2 bids. One bid was \$2,346, and 3 separate bids totaling \$2,188 comprised the second bid. The low bid from the 3 separate companies was approved. Therefore, \$2,188 will be amortized over the remaining lease term (thru 6-30-99). The cost per sq. ft. of the lease will increase from \$7.50 to \$7.55, and the annual cost of the lease will increase from

School Facilities Construction Commission (SFCC) participation in annual debt service payments, for the following school districts:

- a. Anchorage Independent (in Jefferson County) - with gross proceeds of \$1,075,000, to refund school bonds sold in 1989. Annual SFCC debt service participation of \$23,853 and locally-funded debt service of \$89,298.
- b. Clay County - with gross proceeds of \$4,305,000, to refund school bonds sold in 1989. Annual SFCC debt service participation of \$51,341 and locally-funded debt service of \$461,305.
- c. Harlan County - with gross proceeds of \$1,580,000, to refund school bonds sold in 1989 and 1990. Annual SFCC debt service participation of \$163,618 (100%).
- d. Livingston County - with gross proceeds of \$3,710,000, to refund 1987 and 1989 bonds. Annual SFCC debt service participation of \$227,069 and locally-funded debt service of \$205,639. (The Committee approved a bond issuance to refund the 1987 issue on April 15, 1994, but market rates caused the sale to be delayed.)
- e. Mason County - with gross proceeds of \$1,435,000, to fund renovation and addition projects at Mason County High School. Annual SFCC debt service participation of \$39,000 and locally-funded debt service of \$78,500.
- f. Mason County - with gross proceeds of \$755,000, to refund 1988 bonds. Annual SFCC debt service participation of \$14,035 and locally-funded debt service of \$70,515.
- g. Perry County - with gross proceeds of \$4,260,000, to refund 1990 bonds. Annual SFCC debt service participation of \$436,196 (100%).
- h. Williamstown Independent (in Grant County) - with gross proceeds of \$645,000, to refund 1988 bonds. Annual SFCC debt service participation of \$33,000 and locally-funded debt service of \$45,000.

Mr. Howard said all of these refundings are interest rate-sensitive and are very close to the 5% savings threshold required for refundings. Chairman Damron said all of these reflect a very positive environment in the bond market, so districts can refund their project debt to lower their interest cost. Mr. Howard said the market right now is drifting in the other direction, and since all of these district refundings are very close, they may or may not actually happen.

Bond Payee Disclosure Forms and additional preliminary information for each proposed new bond issue were provided, and none of the new issues required an increase in local school tax rates. The motion to approve the 8 SFCC-assisted school

- b. Wayne County - with gross proceeds of \$520,000, to refund 1988 bonds.
- c. Kentucky Interlocal School Transportation Association (KISTA) - 2 bond series. The first, with gross proceeds of \$5,230,000, will fund the purchase of 98 school buses for 31 individual school districts. The second, with gross proceeds of \$1,615,000, will fund the purchase of 31 school buses for 2 school districts.

Bond Payee Disclosure Forms and additional preliminary information for each bond issue were provided. Chairman Damron said the Committee's staff had reviewed the bond issues and found that all required information has been provided. There are no local school tax rate increases associated with the bond issues. Bond payee information must be provided for the locally-funded school bonds prior to their issuance, but Committee action is not required.

Mr. Howard next reported a new bond issue for the University of Louisville (U of L) - Consolidated Educational Buildings Refunding Revenue Bonds, 1996 Series L. The new issue, with gross proceeds of \$15,250,000, will finance a partial advance refunding of U of L's 1987 Series G bonds which financed the Student Activities Center and the Research Animal Care Facility. (The Committee approved the refunding of the Series G bonds in June 1995, but the sale was canceled.) Mr. Howard said the new bonds were expected to sell the following day, on December 18, 1996, by competitive bid, at 4.84% with a 10-year term and ratings of A1, and A+ or AA-. He said total present value savings expected to accrue over the life of the bonds are estimated at around \$600,000, which is less than the \$637,800 initially reported to the Committee. He said this refunding issue is interest rate-sensitive and the financial feasibility is very close, as was true for the school district refundings, and market conditions are being carefully monitored to see if the U of L issue can sell as planned. Senator Buford made a motion to approve the new U of L bond issue. The motion was seconded by Senator Leeper and approved by unanimous voice vote.

Mr. Howard also reported 2 new conduit bond issues by the Kentucky Economic Development Finance Authority (KEDFA). The first was Hospital Revenue Bonds, Series 1997, with gross proceeds of \$150,000,000, for the Baptist Healthcare System. Mr. Howard said the issue proceeds will finance hospital additions, improvements, and equipment at Western Baptist Hospital in Paducah, Baptist Hospital East in St. Matthews, Central Baptist Hospital in Lexington, Baptist Hospital in Corbin, and Tri-County Baptist Hospital in LaGrange. He said the bonds are expected to sell by negotiation on January 22, 1997, with a variable interest rate to be reset every 7 days

motion to approve the new KEDFA conduit bond issue. The motion was seconded by Representative Todd and approved by unanimous voice vote.

Also reported was a second KEDFA conduit bond issue - Variable Rate Demand Hospital Facilities Revenue Bonds, Series 1997A for the Saint Elizabeth Medical Center, Inc. Project. Mr. Howard said the issue, with gross proceeds of \$9,965,000, will fund acquisition, construction and equipping of hospital facilities, including a sports medicine and physical therapy center, a skilled nursing facility and infrastructure, a family practice center, and telephone and financial information systems. He said the issue is anticipated to sell by negotiation on January 22, 1997, at a variable interest rate expected to be around 4%, with a 20-year term.

Chairman Damron said a recent article in the Kentucky Post reported that the Kenton County Fiscal Court had approved the issuance of \$10,000,000 in local bonds to assist a Saint Elizabeth Medical Center project. He asked if that is the same Saint Elizabeth project reported today, and if there are local bonds in addition to the KEDFA issue for the project. Mr. David Malone of Peck Shaffer and Williams, bond counsel for the KEDFA issue, said it is the same Saint Elizabeth project but there are not additional local bonds associated with the project. He indicated that the report was in error.

Chairman Damron noted that Peck Shaffer and Williams serves as both bond counsel and underwriter counsel for the KEDFA issue. He asked if this is not unusual, and if it would not be considered a conflict of interest. Mr. Howard said the practice would not be routine, and would be discouraged for a standard state bond issue. He noted that KEDFA bond issues are conduit issues, whereby the beneficiary - in this case Saint Elizabeth Medical Center - is responsible for all payback. Mr. David Bratcher of the Economic Development Cabinet said use of one counsel is a cost-saving device used in some KEDFA issues with the agreement of all parties. He said this practice is sometimes used if an issue's gross proceeds are under a certain threshold, because the primary work performed is review of legal documents.

Senator Buford asked what the downside would be of using the same law firm as both underwriter counsel and bond counsel. Mr. Howard said there is no downside for the state on this particular issue, because the Medical Center is entirely responsible for all debt service on the bonds. He said it really is a function of the tax codes for 501(c)(3) corporations; they must use a conduit entity for the sale of bonds for the bonds to be tax-exempt. He said there could be a downside for the underwriter if there

are for-profit and doctors who profit. Mr. Bratcher said KEDFA conduit bond beneficiaries have to be 501(c)(3) corporations and he did not believe the Hardin County project would qualify.

Senator Buford said he wondered if more scrutiny might be needed of entities participating in the KEDFA conduit bond issues, and if it is clear enough to potential buyers of the bonds that they are not, by buying the bonds, participating in any sort of state program.

Chairman Damron said Committee staff recommended that any approval action by the Committee for the bond issue be contingent on Peck Shaffer and Williams submitting a certificate to the Committee confirming that it has disclosed its dual representation to both the borrower and the underwriter and the possible effects of such representation. Representative Maggard made that approval motion. The motion was seconded by Representative Todd and approved by unanimous voice vote.

Mr. Howard said information was also provided relating to future plans of the Kentucky Higher Education Student Loan Corporation (KHESLC). The Corporation was reported to be in the process of securing a \$30 million Line of Credit for cash flow management. Mr. Howard noted that the KHESLC Board met on December 11 and through an RFP (Request for Proposals) selected Sallie Mae as supplier of the \$30 million line of credit; negotiations are being finalized. He said the Board also authorized its staff to apply for a private activity bond cap in early 1997 when that process begins, and also to issue up to \$135 million of new tax-exempt or taxable bonds to meet expected demand in 1997. The new bonds are expected to be issued in the Spring, and KHESLC will at that time submit the necessary disclosure information to the Committee.

OFMEA also provided updated monthly and weekly debt issuance calendars.

Chairman Damron said staff provided 2 Information Items. A summary was provided of 98 Bill Request 85, prefiled by Representative Larry Clark to amend capital construction statutes to require General Assembly authorization for any agreement for the use, purchase, or acceptance of any real property or equipment worth more than \$400,000 if the agreement provides that a state entity, including institutions of higher education and affiliated corporations, will become the owner of the real property or equipment at any time, and any portion of the purchase price is funded through the issuance of debt. The bill would also add new restrictions on alteration of capital

of Kentucky. He said both Representative Maggard and Representative Todd have served the General Assembly since 1982, and indicated that Representative Todd, who came to the Committee in January 1984, served more time on the Committee than any present or former member. On behalf of the Committee and its staff, Chairman Damron presented Representative Todd and Representative Maggard with plaques honoring their service on the Committee. Chairman Damron said he hoped both members will return to Frankfort during the 1998 General Assembly and give the legislature the benefit of their wisdom and experience.

Representative Maggard said it had been a real pleasure serving with Chairman Damron as chairman. He said he deeply appreciated the wonderful friendship and fellowship he has had with Committee members and the people of the Executive Branch who report to the Committee each month.

Representative Todd said he, too, had enjoyed serving on this Committee, and working with the Committee's staff and agency staff who report to the Committee monthly.

The next meeting was scheduled for Tuesday, January 28, 1997, at 1:00 p.m. There being no further business to come before the Committee, the meeting was adjourned at 11:55 a.m.